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JUN 11 1945
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1366 124

MARGARET M. JOHNSON AND MARY E. LAYTON, DOING BUSINESS AS UNITED STATES DENTAL COMPANY, AND VOYLE CLARK JOHNSON,
Petitioners,

VS.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Petitioners,

VS.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, Margaret M. Johnson, Mary E. Layton, and Voyle Clark Johnson, respectfully pray that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Seventh Circuit rendered on April 27, 1945, affirming the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, finding petitioners guilty of alleged violations of the Federal Denture Act of 1942 (56 Stat. 1087; 18 U.S.C., Sec. 420 (f)(g). Supplement 1943),

and sentencing them to pay a fine of One Thousand Dollars ($1,000) each. The opinion of the Circuit Court of Appeals appears in the record at page 39 thereof.

Petition for rehearing, which appears in the record on page 43 thereof, was denied by the Court on May 11, 1945.

1. Jurisdiction.

a. Federal jurisdiction of the Court below arose upon an indictment in the United States District Court for the Northern District of Illinois under the Federal Denture Act, U. S. Code, Title 18, Sec. 420(f).

b. The jurisdiction of the Supreme Court to review on Writ of Certiorari is invoked under Section 240 of the Judicial Act, as amended by act of February 13, 1925, 43 Stat. 938; USCA, Title 28, Sec. 347(a).

c. This Court has never passed upon the constitutionality of the substantive provisions of the Federal Denture Act nor upon the constitutionality of the dentistry laws of Indiana, Michigan, and Wisconsin as applied to a dental laboratory constructing dentures from self-taken impressions.

2. Summary Statement of the Matters Involved.

The defendants operate the United States Dental Company, which manufactures dentures under the supervision of dentists licensed under Illinois law. Eleven of these dentures were constructed from impressions sent to them by persons in the states of Indiana, Michigan, and Wisconsin who had personally taken these impressions of their own teeth or mouth. After the dentures were completed, defendants mailed them in Illinois to the persons sending the impressions from the states of Indiana, Michigan, and Wisconsin.

Based upon the above facts which were stipulated by defendants (Tr. 19), defendants were indicted (Tr. 2) for alleged violation of the Federal Denture Act of 1942 (56 Stat. 1087; 18 U.S.C., Sec. 420 (f)(g), Supp. 1943). After pleas of not guilty (Tr. 17), the trial court found the defendants guilty and imposed a fine of $1,000 on each of the three defendants (Tr. 23). Upon appeal to the United States Circuit Court of Appeals for the Seventh Circuit, this judgment was affirmed (Tr. 39). The petition for rehearing was denied (Tr. 53).

3. The Statutes Involved.

The indictment was based upon a charge of violating the Federal Denture Act, which reads as follows:

> "It shall be unlawful, in the course of the conduct of a business of constructing or supplying dentures from casts or impressions sent through the mails or in interstate commerce, to use the mails or any instrumentality of interstate commerce for the purpose of sending or bringing into any State or Territory the laws of which prohibit—
>
> "(1) the taking of impressions or casts of the human mouth or teeth by a person not licensed under the laws of such State or Territory to practice dentistry;
>
> "(2) the construction or supply of dentures by a person other than, or without the authorization or prescription of, a person licensed under the laws of such State or Territory to practice dentistry; or,
>
> "(3) the construction or supply of dentures from impressions or casts made by a person not licensed under the laws of such State or Territory to practice dentistry,
>
> any denture constructed from any cast or impression made by any person other than, or without the authorization or prescription of, a person licensed under the laws of the State or Territory into which such denture is sent or brought to practice dentistry."

The government contended that the dentistry laws of Indiana, Michigan, and Wisconsin contain one or more of the prohibitions enumerated as subparagraphs 1, 2, and 3 in the Federal Denture Act quoted above.

Wisconsin Statutes, 1943, Sec. 152.02;
Indiana Statutes (Burns, 1943), Sec. 63-522;
Michigan Public Acts, 1939, No. 122, Sec. 14.629.

4. The Questions Presented.

The questions involved are:

(1) The constitutionality of the dentistry laws of Indiana, Michigan, and Wisconsin.

(a) Whether the dentistry laws of Indiana, Michigan, and Wisconsin which prohibit a dental laboratory from constructing dentures except upon the order or prescription of or upon the receipt of impressions taken by a licensed dentist, violate the Fourteenth Amendment of the United States Constitution when invoked against a dental laboratory manufacturing dentures from impressions submitted by persons taking said impressions of their own mouth or teeth.

(b) Whether these dentistry laws delegate legislative power over dental laboratories to licensed dentists without standards to guide them, in violation of the Fourteenth Amendment of the United States Constitution.

(2) The constitutionality of the Federal Denture Act of 1942 (56 Stat. 1087; 18 U.S.C. Sec. 420 (f). Supp. 1943)

(a) Whether, as the Circuit Court of Appeals assumed without deciding, Congress may constitutionally delegate its legislative power over the construction of dentures to dentists licensed under state law.

(b) Whether the language of the Federal Denture Act is so vague and ambiguous as to render it unconstitutional in failing to apprise those accused of the nature of the acts prohibited as a crime.

5. Reasons Relied Upon for the Allowance of the Writ.

1.

This is a test case to determine the constitutionality of the Federal Denture Act, an issue never before decided by this Court. This Act was passed in 1942 and its validity or unconstitutionality should now be settled by this Court.

2.

The Circuit Court of Appeals has decided an important question of federal law which has not been, but which should be, settled by this Court.

3.

The opinion of the Circuit Court of Appeals is not in accord with applicable decisions of this Court, and particularly the cases of *Schecter* v. *U. S.*, 295 U. S. 445 and *Carter* v. *Carter Coal Co.*, 298 U. S. 238. The Circuit Court of Appeals failed to give consideration to defendants' contention that the Federal Denture Act unconstitutionally delegates legislative authority to private persons, without standards to guide them, and to the further contention that the uncertainty of the criminal act violates the Fifth and Sixth Amendments.

4.

The Circuit Court of Appeals failed to decide the important question raised by defendants as to whether the

dentistry laws of Indiana, Michigan and Wisconsin are unconstitutional under the Fourteenth Amendment of the Federal Constitution, if these statutes are invoked to prohibit defendants from mailing dentures constructed from self-taken impressions.

5.

The opinion of the Circuit Court of Appeals fails to meet the clear constitutional issues raised by defendants and it does not clearly settle the law regarding the validity of shipments of dentures to states other than Indiana, Michigan and Wisconsin.

6.

It is a matter of public importance that the constitutional rights of persons like the defendants be protected against abuse.

For the reasons above outlined, your petitioners pray that a writ of certiorari issue unto the United States Circuit Court of Appeals for the Seventh Circuit to review its decision in this case.

Respectfully submitted,

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